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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128

Dear Mr. Caton:

Please find enclosed for filing an original and four copies of the Personal Communications Industry Association's further reply comments in the above-referenced proceeding.

Also included is an additional copy of this filing to be date-stamped and returned with our messenger. Please contact me if you have any questions regarding this matter.

Respectfully submitted,

Kent D. Bressie

Kent D. Bressie

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	CC Docket No. 96-128

FURTHER REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

Pursuant to the Commission's public notice[1] following the D.C. Circuit's decision in *Illinois Public Telecommunications Association v. FCC*,[2] the Personal Communications Industry Association ("PCIA")[3] hereby submits these further reply comments in the above-captioned

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1 *See* Public Notice, "Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding," DA 97-1673 (rel. Aug. 5, 1997) ("*Public Notice*").

2 No. 96-1394, slip op. (D.C. Cir. July 1, 1997) ("*Illinois Public Telecom*").

3 PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance; the Broadband PCS Alliance; the Specialized Mobile Radio Alliance; the Site Owners and Managers Association; the Association of Wireless System Integrators; the Association of Communications Technicians; and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

proceeding. As PCIA anticipated in its initial comments,[4] the interexchange carriers ("IXCs") are unable or unwilling to provide adequate blocking capabilities—the basis for the Commission's choice of a "carrier pays" compensation system and for the D.C. Circuit's affirmation of that choice. Without these capabilities, the IXCs lose the competitive leverage touted by the Commission as a check on excessive payphone rates. The Commission should therefore reconsider its decision to reject a "caller" pays compensation system.[5]

PCIA also decries the efforts of some IXCs to profit unfairly from the interim compensation plan struck down by the Court. While many IXCs have agreed with PCIA that the Court rendered the interim compensation plan unenforceable and that there is currently no obligation to pay compensation to payphone service providers ("PSPs"), some IXCs have already begun imposing payphone surcharges as if the interim compensation plan *were* in effect.

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[4] *See* Further Comments of the Personal Communications Industry Association, CC Docket No. 96-128, at 7-8 (filed Aug. 26, 1997) ("PCIA Further Comments").

[5] As PCIA anticipates receiving additional information relevant to this proceeding, including information regarding the technological capabilities and activities of the various carriers, PCIA hereby reserves the right to submit this information to the Commission in the form of informal comments.

I. The Lack of Viable Blocking Technologies Undermines the Commission's Choice of a "Carrier Pays" System of Compensation as a Means for Achieving Market Pricing for Payphone Services

In the *Payphone Orders*,[6] the Commission relied heavily on the promise of blocking technologies as a means for promoting a competitive payphone industry and market pricing through a "carrier pays" system of compensation. The Court, in turn, upheld the Commission's choice of "carrier pays" based on its findings regarding blocking technologies. As anticipated by PCIA, however, the overwhelming lack of viable blocking technologies undermines the Commission's choice of a "carrier pays" system and the Court's affirmation thereof. The various IXCs are unable or unwilling to develop or implement these blocking technologies. Without adequate blocking technologies, IXCs lose the competitive leverage which the Commission and the Court viewed as the key factor in choosing a "carrier pays" system, with consumers paying the ultimate cost.

Both the Commission and the Court envisioned a system whereby IXCs would use blocking technologies as competitive leverage to negotiate lower per-call compensation amounts. In the *Payphone Reconsideration Order*, the Commission stated,

> The marketplace will ensure, over time, that PSPs are not overcompensated. Carriers have significant leverage within the marketplace to negotiate for lower per-call compensation amounts, regardless of the local coin rate at particular payphones, and to

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6 *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order*, 11 FCC Rcd. 20541 (1996) ("*Payphone Report & Order*"); *Order on Reconsideration*, 11 FCC Rcd. 21233 (1996) ("*Payphone Recon. Order*") (collectively, "*Payphone Orders*").

> block subscriber 800 calls from payphones when the associated compensation amounts are not agreeable to the carrier.[7]

The Court upheld the Commission's choice of a "carrier pays" system on the basis of this finding, stating that "[s]ubscribers to an 800 service can utilize a carrier's call-blocking capability by negotiating with the carrier to block calls from payphones with excessive per-call compensation charges."[8] For these reasons, the Court concluded that the Commission's choice of a "carrier pays" system to achieve "competitive market pricing of 800-service payphone per-call compensation charges was not arbitrary and capricious."[9]

Many IXCs, however, are not presently capable of delivering the blocking technologies expected by the Commission and the Court. The record is replete with evidence that IXCs currently lack blocking technologies. Cable & Wireless, for one, states that its network

> can only accomplish blocking for EVERY call from a payphone. CWI cannot selectively block subscriber 800 calls, but continue to allow calls charged to calling or debit cards. CWI's network is capable of only a 'least common denominator' approach—blocking for one product or customer will necessitate blocking for every CWI product originating at the payphone.[10]

The ability of a carrier such as Cable & Wireless to block a call depends on the coding digits which accompany the automatic number identification ("ANI") transmitted at the time of the call. At present, however, the local exchange carriers ("LECs") do not provide the IXCs or their

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[7] *Payphone Recon. Order*, 11 FCC at 21267.

[8] *Illinois Public Telecom*, slip op. at 20.

[9] *Id.* at 21.

[10] Comments of Cable & Wireless, Inc., CC Docket No. 96-128, at 10-11 (filed Aug. 26, 1997).

customers with the proper coding digits that would allow them to design a more tailored blocking system, not to mention facilitation of call tracking.[11] As WorldCom points out, "the failure of LECs to make proper coding digits available to PSPs will affect WorldCom just as it affects AT&T and MCI."[12] The LECs have even conceded that their coding digit proposal does not allow IXCs and their subscribers to identify payphone-originated calls with precision, stating that IXCs "can use the '07'/'27' ANI ii digit codes to identify and segregate calls that ***may have originated*** on payphones."[13]

The record also shows that the IXCs lack the proper incentives to develop blocking technologies. These technologies may be prohibitively expensive. According to AT&T,

> it would cost hundreds of millions of dollars up front to do the systems development work that is necessary to track multiple compensation rates that change during the tracking period at millions of phones and to offer customers the ability to block

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[11] *See, e.g.*, Comments of AirTouch Paging, CC Docket No. 96-128, at 9 (filed Aug. 26, 1997) (noting that "there is no sufficient method for a paging end user to use the coding digits within the ANI to block only calls from payphones that could give rise to a payphone 800 call surcharge . . . [n]or is there an effective means to selectively block calls from only those PSPs that are seeking to impose unreasonably high per call charges for subscriber 800 calls."); Comments of PageMart Wireless, Inc., CC Docket No. 96-128, at 4 (filed Aug. 26, 1997) ("None of the IXCs currently has the technological capacity to provide 800/888 numbers with selective blocking of call from payphones made to these numbers.").

[12] *Ex Parte* Letter from Douglas F. Brent and Richard S. Whitt, on behalf of WorldCom, Inc., to William F. Caton, CC Docket No. 96-128, at 1 (filed Aug. 27, 1997) ("WorldCom Letter"). *See also Ex Parte* Letter of Jeffrey A . Lamken, on behalf of the LEC ANI Coalition, to William F. Caton, FCC, CC Docket No. 96-128 (filed Aug. 18, 1997) (attaching Letter of Milford E. Stanley, AT&T, to BellSouth Telecommunications, July 30, 1997). This letter from AT&T details AT&T's coding digit needs for the proper identification of payphone calls.

[13] Whitepaper on the Provision of ANI Coding Digits of the LEC ANI Coalition, CC Docket No. 96-128, at 7 (filed June 16, 1997) (emphasis added).

> subscriber 800 calls from 'high-priced' payphones at their request.[14]

While development expenses deter the IXCs from developing blocking capabilities, so do the revenues to be made from unblocked calls. IXCs simply do not have a strong incentive to deter revenue-generating calls.[15]

The absence of viable blocking technologies will distort the market for payphone services. Without the ability to block calls in a tailored manner, *i.e.*, on a per-call basis, subscribers such as paging companies may well request IXCs to block all payphone calls in order to avoid unpredictable charges resulting therefrom.[16] This result would make payphone services less attractive to consumers by limiting, rather than expanding, the range of services offered through payphones.

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[14] Comments of AT&T Corp., CC Docket No. 96-128, at 17 (filed Aug. 26, 1997). While not cited as a source of leverage over PSPs, tracking services are also a critical technological component of the "carrier pays" compensation scheme envisioned by the Commission, providing adequate information to IXCs and their customers, such as paging companies, for billing purposes. As with blocking capabilities, many IXCs are unable or unwilling to offer adequate tracking services. *See id.*; WorldCom Letter, at 4 (stating that call tracking under the ANI digit coding proposed by the LECs greatly burdens IXCs and that the alternatives of LIDB validation or Flex ANI are both prohibitively expensive and not required by the *Payphone Orders*).

[15] *See* Comments of Paging Network, Inc., CC Docket No. 96-128, at 8 (filed Aug. 26, 1997) ("PageNet Comments") ("Because these calls generate renevue for the IXC, it is in the economic interest of the IXCs to let 800 subscriber and access code calls through.").

[16] In the case of Cable & Wireless, blocking by subscriber is not even possible, meaning that Cable & Wireless would need to block all payphone calls on its network, or none. *See* Cable & Wireless Comments, at 10.

The record in this proceeding does not support the Commission's choice of a "carrier pays" system or the basis for the Court's affirmation thereof. Without viable blocking or competitive leverage over the PSPs, IXCs and their customers will not be able to affect the price for payphone services. This perverse outcome would be completely at odds with the Commission's desire to achieve market pricing for payphone services and a competitive payphone industry.[17] This result only underscores the value of the "caller pays" system long advocated by PCIA and its members.[18] Only a "caller pays" system gives the party incurring the cost of payphone services the ability and the incentive to police the cost of those services.

The Commission should also consider implementing a system of new non-geographic-specific numbering plan area codes as part of a modified "caller pays" system of compensation. At least one commenter in this proceeding—AirTouch Paging—has already made a more specific proposal for a unique 8XX code, which would allow a caller to call toll free for long-distance purposes but only following the deposit of a coin.[19] PCIA finds the AirTouch Paging proposal an attractive one which the Commission and the parties to this proceeding need additional time to investigate. The Commission should study this and other 8XX-type approaches to achieve its objectives of a competitive payphone industry and market pricing for payphone services.

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[17] *See Payphone Report & Order*, 11 FCC Rcd. at 20567 (concluding that "the most appropriate way to ensure that PSPs receive fair compensation for each call," and to promote PSP competition, "is to let the market set the price" for payphone calls).

[18] *See* PCIA Further Comments, at 9-10; AirTouch Paging Comments, at 2; PageMart Wireless Comments, at 3; PageNet Comments, at 9-12.

[19] *See* AirTouch Paging Comments, at 4 n.10.

II. The Commission Should Bar IXCs from Collecting a Windfall Resulting from Higher Rates for Customers and a Refusal to Pay Compensation to PSPs

A number of the IXCs have sought to profit unduly and unfairly from these proceedings by imposing higher rates on customers while insisting that the Court's decision relieves them of any present obligation to compensate PSPs. The IXCs generally agree that the Court's decision renders the interim compensation plan unenforceable, meaning that they are not presently obligated to pay compensation to PSPs under the interim plan. Nevertheless, some IXCs have already begun to impose payphone surcharges on their customers, such as paging companies, and others plan to impose such surcharges shortly.

The IXCs generally agree with PCIA that the Court struck down the Commission's interim compensation plan, thus precluding the Commission from imposing that plan unless and until it adopts final rules in this remand proceeding. AT&T stated in an *ex parte* letter that "it believes the Notice misinterpreted the D.C. Circuit's decision. Therefore, AT&T will not make future payments of interim compensation under the *Payphone Orders* pending the entry of an order on remand."[20] Other carriers have followed AT&T's lead.[21]

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[20] *Ex Parte* Letter of Peter H. Jacoby, AT&T, to A. Richard Metzger, FCC, CC Docket No. 96-128, at 1 (filed Aug. 15, 1997).

[21] *See, e.g.*, Comments of LCI International Telecom Corp., CC Docket No. 96-128, at 3 (filed Aug. 26, 1997) (stating that "no valid interim payphone compensation obligation is in place at this time and . . . [LCI] is not obligated to pay any interim compensation amount to PSPs until a new plan properly is adopted."); Cable & Wireless Comments, at 4 ("Based upon the Court's ruling, CWI believes that no valid payphone compensation obligation could possibly be in place at this time, and that it is not obligated to pay the interim compensation amount to PSPs pending action on remand.").

While recognizing that the interim compensation plan is unenforceable following the Court's decision in *Illinois Public Telecom*, the IXCs have nevertheless begun, or indicated that they will shortly begin, to impose surcharges on their customers. AirTouch Paging noted that "MCI has raised its rates by more than 6% and Sprint has raised its rates by 7%."[22] WorldCom stated that it "anticipates filing tariff revisions for certain of its retail services to add a pay telephone surcharge."[23] Frontier claims that "AT&T, among others, has already tariffed a payphone surcharge to recover payphone compensation."[24]

The position of some of the IXCs is at best inconsistent and at worst hypocritical. In view of their strong legal arguments that the interim compensation plan was struck down by the Court, they have no justification for imposing surcharges on their customers at present or before the adoption of final rules in this proceeding.

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22 AirTouch Paging Comments, at 6 n.15.

23 WorldCom Letter, at 3.

24 Comments of Frontier Corp., CC Docket No. 96-128, at 4 n.13 (filed Aug. 26, 1997).

CONCLUSION

For the reasons stated above and in PCIA's Further Comments filed on August 26, 1997, the Commission must refrain from imposing its interim compensation plan pending the conclusion of this remand proceeding. The Commission's choice of a "carrier pays" system has been undermined by the absence of viable blocking technologies, thereby thwarting the Commission's objectives of achieving market pricing for payphone services and a competitive payphone industry. The Commission should therefore reconsider its decision to reject a "caller pays" system of compensation. The Commission must also ensure that the IXCs do not profit unfairly from this proceeding, imposing rate surcharges on customers while insisting that the legal impetus for such charges was struck down by the Court.

Respectfully submitted,

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Dated: September 9, 1997

CERTIFICATE OF SERVICE

I, Kent D. Bressie, do hereby certify that a copy of the foregoing Further Reply Comments of the Personal Communications Industry Association has been sent by first-class mail, postage prepaid, on this 9th day of September, 1997 to the following:

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